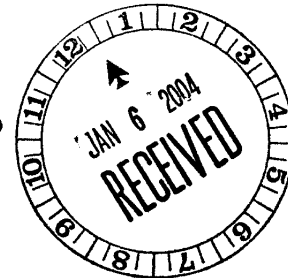


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ORIGINAL



January 5, 2004

VIA UPS 2ND DAY AIR

Hon. Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, NW (7th fl.)
Washington, DC 20423-0001

ENTERED
Office of Proceedings

JAN - 6 2004

Part of
Public Record

This refers to STB Finance Docket No. 34415, Ohio Department of Transportation-Petition for Declaratory Order-Status of Track at Findlay, Hancock County, OH, and the Michigan Sugar Company's Comments, filed December 23, 2003, in opposition to the Petition for Declaratory Order of the Ohio Department of Transportation.

The pleading is procedurally and substantively deficient and should be rejected or denied.

Pursuant to the Board's rules of practice, 49 C.F.R. 1104.13, replies must be filed within twenty days' time. ODOT's Petition was filed October 17, 2003, and, hence, the Comments of Michigan Sugar Company are well out of time and should not be entertained by the Board.

At page 5 of its Comments, Michigan Sugar Company contends that 49 U.S.C. 10501(b) vest the Board with jurisdiction over its spur. It, however, errs. Michigan Sugar Company is not a rail carrier; it is a shipper, and, hence, pursuant to 49 U.S.C. 10501(a), its proprietary track is not within the Board's jurisdiction.

At page 6 of its Comments, Michigan Sugar Company claims that Norfolk Southern Railway Company, successor to the Nickel Plate, continues to have an easement over its proprietary track. The easement was granted the Nickel Place by the Great Lakes Sugar Company in 1937 and was to continue only until Great Lakes Sugar Company "ceases and abandons operations of its plant." ODOT maintains - as set forth in its First Claim for Relief in its Complaint to Quiet Title and for Declaratory Judgment before the Hancock County Court of Common Pleas - that the easement grant was extinguished when in 1955 Great Lakes Sugar Company deeded its Findlay property to Northern Ohio Sugar Company and thereupon

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Page Two

permanently ceased to operate its Findlay plant.


This is exactly the sort of contractual dispute that the Board eschews. STB Docket No. 42053, The Town of Woodbridge, NJ, et al. v. Consolidated Rail Corporation, Inc., served December 1, 2000 ("It would be inappropriate for us to rule on the merits of the contract dispute in this case. Such matter are best addressed by the courts [footnote omitted]."); Burlington Nor. R. Co.—Order for Just Compensation, 7 I.C.C. 74, 77 (1990) ("Contractual claims such as those asserted here can be resolved by the parties themselves or by resorting to appropriate civil courts. The Commission does not otherwise enforce contracts, either specifically or by awards of damages for their breach [citations omitted].")

Ten copies of this letter are enclosed to permit your circulation of it. An additional copy of this letter is enclosed for you to stamp to acknowledge your receipt of it and to return to me in the enclosed stamped and self-addressed envelope..

Service of this letter upon each of the parties to this proceeding has been effected by facsimile transmitting copies to their representatives.

If you have any question concerning the foregoing which you believe I may be able to answer or if I otherwise can be of assistance, please let me know.

Sincerely yours,



Fritz R. Kahn

enc.

cc: Jeffrey A. Culver, Esq. (419) 517-7001
Roger L. Miller, Esq. (419) 423-1868
James R. Paschall, Esq. (757) 533-4872